



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of: Tek-Lite, Inc.--Reconsideration

File: B-225747.3

Date: October 30, 1987

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### DIGEST

Request for reconsideration is denied where protester reiterates argument from original protest, which was rejected in General Accounting Office's decision, and disagrees with decision, but presents no argument or information establishing that decision was legally or factually erroneous.

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### DECISION

Tek-Lite, Inc. protests the alleged ambiguity of invitation for bids (IFB) No. 400-87-B-2067, issued by the Defense Logistics Agency for portable ground marker lights for use on runways and landing zones, and also maintains that the agency should add an evaluation factor to a competitor's apparent low bid. While the protester characterizes its arguments as a protest, we consider them to constitute a request for reconsideration since they pertain to our prior decision, Tek-Lite, Inc., B-225747.2, Sept. 4, 1987, 87-2 CPD ¶     , and are related to the issues raised in the previous protest.

We deny the request.

In its original protest, Tek-Lite argued that an evaluation factor to be added only to bids offering items based on a value engineering change proposal (VECP) should not be added to its bid, which it claimed incorporated a slightly different specification than the VECP; Tek-Lite argued that this bidding alternative was provided for under the IFB. In our September 4 decision, we found that Tek-Lite had unreasonably interpreted the IFB as providing for three, instead of two, bidding alternatives (the IFB also permitted bids based on a standard military specification). We concluded that, since it was clear that Tek-Lite actually would furnish VECP items if awarded a contract, Tek-Lite's bid price should have been evaluated by adding the VECP evaluation factor, even though Tek-Lite had not marked the box in its bid indicating that it was bidding under the VECP. This displaced Tek-Lite as the apparent low bidder.

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Tek-Lite now argues that because of the alleged IFB ambiguity as to whether the evaluation factor would apply to partial use of the VECP, it is impossible to ascertain from the face of the remaining bids, including the new apparent low bid (that of Pluribus Products, Inc.), whether the bids in fact were based on all or part of the VECP, and thus should be evaluated with the factor added. Tek-Lite claims the IFB therefore is fatally defective.

This argument largely restates the essence of Tek-Lite's original protest: that the IFB arguably allowed bids based on using part of the VECP as a third bidding alternative that would not require addition of the evaluation factor. As explained above, we expressly rejected this interpretation in our decision--that is, partial use of the VECP was not an acceptable bidding approach--and Tek-Lite has not shown that our decision contained errors of fact or law that warrant reversal or modification of it.

Tek-Lite also alleges that, although Pluribus did not indicate in its bid that it was offering marker lights in compliance with the VECP, Pluribus intends partial use of the VECP, and that the evaluation factor therefore should be added to its bid. In the absence of a clear indication from the remaining bidders that they found the IFB confusing or were offering items based on the VECP, there is no basis for the agency to add the evaluation factor to the bids; the agency was required to add the factor to Tek-Lite's bid only because of the clear indication from the firm in presenting its protest that it was offering the VECP alternative. There has been no similar representation by Pluribus or other bidders, and Pluribus also has not represented that it intends to use the VECP in part.<sup>1/</sup>

Further, whether Pluribus can or will perform as indicated in its bid--by furnishing items built entirely to the standard specification--is a question of the firm's

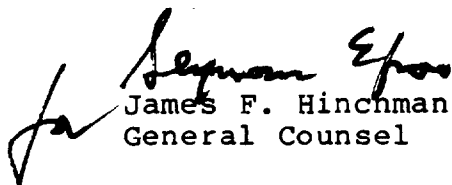
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<sup>1/</sup> Tek-Lite believes partial VECP use is indicated in Pluribus' bid by a reference to a 1984 contract (in the first article waiver clause) under which these items were accepted by the government; Tek-Lite contends that the items furnished were not compliant with the standard military specification. We find no basis for going back and questioning the agency's acceptance of items as conforming to specifications under a prior contract in order to determine whether the contractor plans to furnish conforming items on this contract. Pluribus has indicated it plans to furnish items in accordance with the standard specification, and we find no clear evidence that Pluribus will do otherwise.

responsibility. Prior to award, an agency is required to make an affirmative determination of the prospective awardee's responsibility, which we will not question absent a showing of bad faith or fraud or that the solicitation contains definitive responsibility criteria which have been misapplied. Le Don Computer Services, Inc., B-225451, Jan. 9, 1987, 87-1 CPD ¶ 46; Federal Acquisition Regulation, 48 C.F.R. § 9.103(b) (1986). Neither allegation is made here. Finally, once the contract is awarded, whether the awardee provides conforming products is a matter of contract administration, which is the responsibility of the contracting agency, not our Office. 4 C.F.R. § 21.3(f)(1) (1987).

Tek-Lite has requested a conference to discuss this matter. In view of the above, however, a conference would serve no useful purpose, and we thus deny the request. Franklin Wire & Cable Co.--Reconsideration, B-218557.2 et al., June 5, 1985, 85-1 CPD ¶ 644.

The request for reconsideration is denied.

  
James F. Hinchman  
General Counsel